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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.      | CONFIRMATION NO. |
|---|-------------|----------------------|--------------------------|------------------|
| 09/957,012  | 09/20/2001  | John Lezdey          | 1434-K                   | 3483             |
| 7590 10/07/2003   |             |                      |                          |                  |
| John Lezdey & Associates<br>4625 EAST BAY DRIVE<br>SUITE302<br>Clearwater, FL 33764 |             |                      | EXAMINER<br>COE, SUSAN D |                  |
|   |             |                      | ART UNIT<br>1654         | PAPER NUMBER     |

DATE MAILED: 10/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                        |                                      |                                      |  |
|------------------------|--------------------------------------|--------------------------------------|--|
| <b>Advisory Action</b> | <b>Application No.</b><br>09/957,012 | <b>Applicant(s)</b><br>LEZDEY ET AL. |  |
|                        | <b>Examiner</b><br>Susan Coe         | <b>Art Unit</b><br>1654              |  |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 25 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 2, 3, 5-11 and 21.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_.

**Supplement to Advisory Action**

1. The amendment filed September 25, 2003 will be entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.

2. Applicant's arguments regarding the 103 rejections of record are not persuasive. Applicant argues that the claims are patentable because the references do not teach using secretory leucocyte protease inhibitor. However, in the response filed by applicant on May 7, 2003, applicant admitted that all of the species, i.e. alpha-1-antitrypsin, secretory leucocyte protease inhibitor and alpha-2-macroglobulin, are all obvious over each other (see second paragraph of "Remarks" section of this response). This means that applicant admits that it would be obvious to substitute the species for each other. Therefore, the claims are still considered obvious based on applicant's admission that all of the species are obvious over each other because it would be considered obvious to substitute secretory leucocyte protease inhibitor for alpha-1-antitrypsin.

The statement that all of the species were obvious over each other was used as the basis for withdrawing the election of species requirement in the last Office action. If applicant had not made this statement, the requirement would not have been withdrawn. For applicant to attempt to assert the patentability of secretory leucocyte protease inhibitor over alpha-1-antitrypsin is completely inconsistent with the prosecution record in the case and is not a convincing means to obtain patentable claims.

3. No claims are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner  
October 3, 2003



LEON B. LANKFORD, JR.  
PRIMARY EXAMINER